MONTANA LEGISLATIVE HISTORY

Chapter 586 19 89

Bill H _____ S 167 Original bill & history ___C

H. Committee on 1 Agriculture - referred to 2 Judiciary		S. Committee on Agriculture	
Hearing Date(s) 3-20	___C	Hearing Date(s) 2-3	___C
_____	___C	2-10	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 3-20	___C	Date out 2-13	

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

1/17	INTRODUCED		
1/17	REFERRED TO STATE ADMINISTRATION		
1/23	HEARING		
1/26	COMMITTEE REPORT--BILL PASSED		
1/30	2ND READING PASSED	29	20
2/01	3RD READING PASSED	27	23
	TRANSMITTED TO HOUSE		
3/04	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/21	HEARING		
3/22	TABLED IN COMMITTEE		

SB 166 INTRODUCED BY BENGTSON, ET AL.
PROVIDE FOR ADMINISTRATION OF TEMPORARY PRELIMINARY AND PRELIMINARY DECREES

1/17	INTRODUCED		
1/17	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
1/19	FISCAL NOTE REQUESTED		
1/28	FISCAL NOTE RECEIVED		
1/30	FISCAL NOTE PRINTED		
2/03	HEARING		
2/14	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/16	2ND READING PASSED	42	1
2/18	3RD READING PASSED	47	2
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO NATURAL RESOURCES		
2/27	REREFERRED TO JUDICIARY		
3/20	HEARING		
3/21	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	86	8
3/29	3RD READING CONCURRED	82	16
	RETURNED TO SENATE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	50	0
4/05	3RD READING AMENDMENTS CONCURRED	49	0
4/11	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 604 EFFECTIVE DATE: 4/21/89		

SB 167 INTRODUCED BY BENGTSON, ET AL.
REOPEN WATER RIGHT DECREES FOR OBJECTIONS ON ISSUES NOT PREVIOUSLY RESOLVED

1/17	INTRODUCED		
1/17	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
1/19	FISCAL NOTE REQUESTED		
1/28	FISCAL NOTE RECEIVED		
1/30	FISCAL NOTE PRINTED		
2/03	HEARING		
2/14	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/16	2ND READING PASSED	48	0
2/18	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		

2/21 REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.
2/27 REREFERRED TO JUDICIARY
3/20 HEARING
3/21 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/27 2ND READING CONCURRED AS AMENDED 86 8
3/29 3RD READING CONCURRED 74 22

RETURNED TO SENATE WITH AMENDMENTS
4/04 2ND READING AMENDMENTS CONCURRED 49 0
4/06 3RD READING AMENDMENTS CONCURRED 48 1

4/11 SIGNED BY PRESIDENT
4/17 SIGNED BY SPEAKER
4/18 TRANSMITTED TO GOVERNOR
4/20 SIGNED BY GOVERNOR
CHAPTER NUMBER 586 EFFECTIVE DATE: 4/21/89

SB 168 INTRODUCED BY BENGTSON, ET AL.
ALLOW CORRECTION OF CLERICAL MISTAKES IN FINAL DECREES OF WATER RIGHTS

1/17 INTRODUCED
1/17 REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.
2/03 HEARING
2/13 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/15 2ND READING PASSED 50 0
2/17 3RD READING PASSED 50 0

TRANSMITTED TO HOUSE
2/21 REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.
2/27 REREFERRED TO JUDICIARY
3/20 HEARING
3/21 COMMITTEE REPORT--BILL CONCURRED
3/27 2ND READING CONCURRED 90 2
3/29 3RD READING CONCURRED 93 2

RETURNED TO SENATE
3/31 SIGNED BY PRESIDENT
3/31 SIGNED BY SPEAKER
3/31 TRANSMITTED TO GOVERNOR
4/04 SIGNED BY GOVERNOR
CHAPTER NUMBER 426 EFFECTIVE DATE: 10/01/89

SB 169 INTRODUCED BY BENGTSON, ET AL.
PROVIDE FOR TEMPORARY PRELIMINARY DECREES AND FOR OBJECTIONS ON THE DECREES

1/17 INTRODUCED
1/17 REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.
1/19 FISCAL NOTE REQUESTED
1/28 FISCAL NOTE RECEIVED
1/30 FISCAL NOTE PRINTED
2/03 HEARING
2/14 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/16 2ND READING PASSED AS AMENDED 48 0
2/18 3RD READING PASSED 49 0

TRANSMITTED TO HOUSE
2/21 REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.
2/27 REREFERRED TO JUDICIARY

BILL STATUS SYSTEM
RPT S2

STATE OF MONTANA
MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
CURRENT STATUS OF ALL BILLS EVER REFERRED TO (S) AGRICULTURE

PAGE NBR..... 1
TIME: 12:33
DATE: 05/02/89

CHAIRMAN--TOM BECK
SECRETARY-JAELENE JOHNSON
NORMAL SCHEDULE==> SITE: ROOM 413/415

COMMITTEE--(S) AGRICULTURE
DAYS: M,W,F TIME: 1:00 P.M.

OFFICE--ROOM 439

NOTE: BILL WILL BE LISTED TWICE IF REREFERRED BACK TO THE SAME COMMITTEE

BILL	REFER DATE	LATEST DATE/ACTION ON BILL	
SB 13	01/02	04/24--TABLED IN COMMITTEE SPONSOR: WEEDING, CECIL	TITLE-INTERSTATE COMPACT ON AGRICULTURAL GRAIN MARKETING
SB 28	01/02	03/08--(H) TABLED IN COMMITTEE SPONSOR: MEYER, DARRYL	(H) AGRICULTURE, LIVESTOCK & IRRIG TITLE-CLARIFY DEFINITION OF VETERINARY MEDICINE
SB 32	01/02	04/24--TABLED IN COMMITTEE SPONSOR: JENKINS, LOREN	TITLE-PROVIDE DISTRIBUTION OF CONSERVATION RESERVE PROGRAM RENTAL PAYMENTS
SB 32	01/12	04/24--TABLED IN COMMITTEE SPONSOR: JENKINS, LOREN	TITLE-PROVIDE DISTRIBUTION OF CONSERVATION RESERVE PROGRAM RENTAL PAYMENTS
SB 57	01/03	03/20--(S) CHAPTER NUMBER SPONSOR: JENKINS, LOREN	EFFECTIVE DATE: 03/18/89 TITLE-AMEND CUSTOM COMBINERS' TAX
SB 81	01/07	03/22--(S) CHAPTER NUMBER 1/10 rereferred to Highways SPONSOR: PINSONEAULT, DICK	EFFECTIVE DATE: 03/22/89 TITLE-CONTINUE PROVISION PRECLUDING HIGHWAY RESTRICTIONS ON HAULING AGRI. SEEDS
SB 111	01/~~18~~ 25	04/25--(S) SIGNED BY PRESIDENT SPONSOR: BOYLAN, PAUL	TITLE-GENERALLY REVISE PRACTICE OF VETERINARY MEDICINE
SB 111	02/13	04/25--(S) SIGNED BY PRESIDENT SPONSOR: BOYLAN, PAUL	TITLE-GENERALLY REVISE PRACTICE OF VETERINARY MEDICINE
SB 166	01/17	04/21--(S) CHAPTER NUMBER SPONSOR: BENGTSON, ESTHER	EFFECTIVE DATE: 04/21/89 TITLE-PROVIDES FOR ADMINISTRATION OF TEMPORARY PRELIMINARY AND PRELIMINARY DECREES
SB 167	01/17	04/20--(S) CHAPTER NUMBER SPONSOR: BENGTSON, ESTHER	EFFECTIVE DATE: 04/21/89 TITLE-REOPENS WATER RIGHT DECREES FOR OBJECTIONS ON ISSUES NOT PREVIOUSLY RESOLVED
SB 168	01/17	04/04--(S) CHAPTER NUMBER SPONSOR: BENGTSON, ESTHER	EFFECTIVE DATE: 10/01/89 TITLE-ALLOWS CORRECTION OF CLERICAL MISTAKES IN FINAL DECREES OF WATER RIGHTS
SB 169	01/17	04/21--(S) CHAPTER NUMBER SPONSOR: BENGTSON, ESTHER	EFFECTIVE DATE: 04/21/89 TITLE-PROVIDES FOR TEMPORARY PRELIMINARY DECREES AND FOR OBJECTIONS ON THE DECREES
SB 176	01/18	03/20--(S) CHAPTER NUMBER SPONSOR: DEVLIN, GERRY	EFFECTIVE DATE: 10/01/89 TITLE-IMPOSE $25 LATE PAYMENT PENALTY ON STATE AGRICULTURAL AND GRAZING LEASES
SB 183	01/18	03/18--(S) CHAPTER NUMBER SPONSOR: ABRAMS, HUBERT	EFFECTIVE DATE: 03/18/89 TITLE-INCLUDES LITTLE MISSOURI RIVER BASIN IN THE WATER RESERVATION PROCESS
SB 213	01/21	03/20--(S) CHAPTER NUMBER SPONSOR: HOFMAN, SAM	EFFECTIVE DATE: 10/01/89 TITLE-INCREASING THE ALLOWABLE SEED OR GRAIN LIEN TO AMOUNT OF PURCHASE PRICE
SB 222	01/25	03/20--(S) CHAPTER NUMBER SPONSOR: TVEIT, LARRY	EFFECTIVE DATE: 10/01/89 TITLE-PASSING OF TITLE TO CATTLE FROM AUCTION YARD
SB 228	01/25	04/24--TABLED IN COMMITTEE SPONSOR: HAGER, TOM	TITLE-KILLING DOGS THAT DESTROY OR MAIM POULTRY
SB 233	01/25	03/20--(S) CHAPTER NUMBER SPONSOR: MANNING, DICK	EFFECTIVE DATE: 03/20/89 TITLE-AUTHORIZE MULE RACING
SB 254	01/26	04/24--TABLED IN COMMITTEE	

SENATE BILL NO. 167

INTRODUCED BY Bengtson Galt Story Stewart Spaeth Marks Bradley Emerson

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE WATER COURTS TO REOPEN AND REVIEW ALL TEMPORARY PRELIMINARY DECREES, PRELIMINARY DECREES, AND FINAL DECREES ACCORDING TO CERTAIN PROCEDURES AND LIMITATIONS; AND PROVIDING A RETROACTIVE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Reopening and review of decrees. (1) Within 180 days following [the effective date of this act], the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all temporary preliminary, preliminary, or final decrees that have been issued by the water courts prior to [the effective date of this act].

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the subbasin for which the decree was entered; or

(ii) in other subbasins that are hydrologically connected to sources within the subbasin for which the decree was entered.

(b) No objection seeking to reopen and review any matter previously litigated and resolved as the result of any previous objection process is allowed, unless the objection is by an Indian tribe or federal agency that commenced negotiations pursuant to 85-2-702 or 85-2-703 at the time the matter was litigated. A tribe or federal agency that commenced negotiations at the time the matter was litigated is entitled to the benefits of the suspension provided under 85-2-217.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232.

(4) Notice of the reopening and review of a temporary preliminary, preliminary, or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation which in total cover the water division or divisions in the general stream basin in which the decreed subbasin is located.

(5) No objection may cause a reopening and review of a

INTRODUCED BILL
SB 167

claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within 180 days after entry of the order under subsection (1).

(6) The water judge shall notify the claimant of any timely objection to his claim and, after further reasonable notice to both the claimant and the objector or objectors, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence before him, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued temporary preliminary or preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the temporary preliminary or preliminary decree has been made a final decree.

NEW SECTION. **Section 2.** Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [section 1].

NEW SECTION. **Section 3.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 4.** Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-209, to all temporary preliminary decrees, preliminary decrees, and final decrees that have been issued by the Montana water courts prior to [the effective date of this act]. [This act] does not apply to a temporary preliminary decree, preliminary decree, or final decree issued on or after [the effective date of this act].

NEW SECTION. **Section 5.** Effective date. [This act] is effective on the latest date on which any of the following

occur:

(1) passage and approval of [this act], __Bill No.__ [LC 683], __Bill No.__ [LC 684], or __Bill No.__ [LC 685]; or

(2) a final determination of failure to receive passage and approval of __Bill No.__ [LC 683], __Bill No.__ [LC 684], or __Bill No.__ [LC 685].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB167, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
An act requiring the water court to reopen and review all temporary preliminary decrees, preliminary decrees and final decrees according to certain procedures and limitations; and providing a retroactive effective date.

ASSUMPTIONS:

1. New Section 1.(3) requires notice for the reopening and review of a decree to persons entitled to receive notice under 85-2-232, MCA. The average cost of preparing, printing and mailing a notice is $0.28 and 52,000 owners in the 41 decreed basins will receive a notice at a total cost of $14,560.
2. New Section 1.(4) requires notice for the reopening and review of a decree to be published for three consecutive weeks in at least three newspapers which cover the water divisions in which the decree is located and the water court will pay the costs of newspaper notices in current level appropriation.
3. New Section 1.(6) requires that notice be given to the claimant of any timely objection to his claim and it is assumed that there will be a minimum of one objection in each of the 41 decreed basin. This will result in notice to 52,000 owners at a cost of $0.28 each for a total cost of $14,560.
4. Section 85-2-232(2) states that a person may obtain a copy of the preliminary decree upon payment of a fee of $20 or the cost of printing, whichever is greater. The average cost to print a decree is $60 and it is assumed a minimum of three requests will be received in each of the 41 basins, for a total of 123 requests and $7,380 increased operating costs. Money received from persons for printing is deposited to the general fund.
5. New Section 1.(7) requires the water judge to take action on the objections which may include modification of a portion of a decree. It is assumed the six final decrees may have to be reissued if objections are received. Although it is the responsibility of the Department of Natural Resources and Conservation (DNRC) to assist the water court in reissuing these decrees, the fiscal impact on DNRC cannot be estimated at this time because the extent of the modification to the decrees is unknown.

Ray Shackleford 1/28/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Esther G Bengtson 1-28-89
ESTHER G. BENGTSON, PRIMARY SPONSOR DATE

Fiscal Note for SB167, as introduced

SB 167

FISCAL IMPACT:
Dept. of Natural Resources Unknown at this time

Water Court Judiciary	FY90 Current Law	FY90 Proposed Law	FY90 Difference	FY91 Current Law	FY91 Proposed Law	FY91 Difference
Expenditures:						
Personal Services	$336,003	$336,003	-0-	$336,396	$336,396	-0-
Operating Expenses	114,093	150,593	36,500	114,090	150,590	36,500
Total	$450,096	$486,596	$36,500	$450,486	$486,986	$36,500
Funding:						
State Special Revenue Resource Indemnity Trust	$450,096	$486,596	$36,500	$450,486	$486,986	$36,500
Revenues:						
To General Fund	-0-	$ 7,380	$ 7,380	-0-	$ 7,380	$ 7,380

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By Chairman Tom Beck, on February 3, 1989, at 1:00 P.M.

ROLL CALL

Members Present: Senators: Hubert Abrams, Gary Aklestad, Esther Bengtson, Gerry Devlin, Jack Galt, Greg Jergeson, Gene Thayer, Bob Williams, and Chairman Beck

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council
Debbie Thompson transcribed the minutes

Announcements/Discussion: None

HEARING ON SENATE BILL 169

Presentation and Opening Statement by Sponsor: Senator Bengtson presented the water rights bills as a package. She presented testimony on Some Basics concerning the Water Rights Adjudication Process (Exhibit 1). She said this explained the division of the Montana water courts, the current adjudication laws, review of claims, and the issuing of decrees by the water courts.

Senator Bengtson discussed the water rights adjudication bills by request of the Water Policy Committee (Exhibit 2). She explained the hiring of the consultant firm of Saunders, Snyder, Ross & Dickson to evaluate the adjudication process and make recommendations. She said the package of four bills, SB 169, SB 166, SB 167, and SB 168 were a result of these recommendations.

List of Testifying Proponents and What Group They Represent:

Jack Ross representing Saunders, Snyder, Ross & Dickson
Jo Brunner representing Montana Water Resource Committee
Carol Mosher representing Montana Stockgrowers and CattleWomen and the Montana Association of State

water right have not been resolved. The statute provides a basis for the District Court referring those questions to the water court where they have special expertise in those matters.

Mr. Don MacIntyre, representing the Department of Natural Resources, spoke in support of SB 166. He said the department supports the bill and feels that it is the most critical bill coming before the legislature.

Jo Brunner offered some amendments to SB 166. See exhibit 5.

Testimony:
Opponents:

Carol Mosher-See exhibit 6.

Ed Steinmetz-See exhibit 10.

Questions From Committee Members: Questions were limited due to the lack of time.

Closing by Sponsor: Senator Bengtson closed.

HEARING ON SENATE BILL 167

Presentation and Opening Statement by Sponsor: Senator Bengtson stated, "With certain limitations this bill reopens all temporary preliminary decrees, preliminary decrees, and final decrees that have been issued by the water courts for reexamination and objections. Section 1 of the bill would be a new section in Title 85, chapter 2, part 2, this is the adjudication laws." See exhibit 2.

List of Testifying Proponents and What Group They Represent:

Jack Ross representing the Water Policy Committee from the Firm of Saunders, Snyder, Ross, and Dickson

List of Testifying Opponents and What Group They Represent:

Ed Steinmetz representing the Montana Water Court
Jo Brunner representing the Montana Water Resource Committee
Don MacIntyre representing the Department of Natural Resources and Conservation
Carol Mosher representing the Montana Stockgrowers

Association, the Montana CattleWomen and the Montana Association of State Grazing Districts

Testimony:
Proponents:

Jack Ross said the reopening of decrees was necessary in order to provide adequate notice to all claimants in a basin so objections could be addressed. However, no objection would be allowed on an issue that had been previously litigated and resolved. He also presented an amendment to clarify language relating to extension periods.

Testimony:
Opponents:

Ed Steinmetz felt the language should be added to incorporate "notice of intent to appear" provisions. The section limiting objections should be reviewed carefully. This section would limit objections to "those who have had notice an opportunity to participate" to by letter? It does not seem fair to prohibit certain state claimants from objections even though they never had proper notice of the contested action. As a practical matter, a claim already objected to and resolved by the water court would not be objected to a gain unless strong evidence exists. Should the provision of this bill applied within 180 days of the effective date or would it be better to just make it apply at the preliminary decree stage? If it is applied at temporary preliminary decree, would division-wide notice again be necessary at the preliminary decree?

Jo Brunner stated the Montana Water Resource Committee opposes SB 167 as it now reads.

Don MacIntyre said the department objected to reopening all decrees.

Carol Mosher-See exhibit 7.

Questions From Committee Members: None

Closing by Sponsor: Senator Bengtson closed.

ROLL CALL

AGRICULTURE COMMITTEE

DATE 2/3/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR HUBERT ABRAMS	✓		
SENATOR GARY AKLESTAD	✓		
SENATOR ESTHER BENGTSON	✓		
SENATOR GERRY DEVLIN	✓		
SENATOR JACK GALT	✓		
SENATOR GREG JERGESON	✓		
SENATOR GENE THAYER	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM BECK	✓		

Each day attach to minutes.

EXHIBIT NO. 1
DATE 2/3/89
BILL NO. SB169 SB166 SB167 SB168

SOME BASICS CONCERNING THE WATER RIGHTS ADJUDICATION PROCESS

February 1989

1. The Montana Water Courts are organized into four divisions:

   - the Upper Missouri River Basin (Chief Judge W.W. Lessley);
   - the Lower Missouri River Basin (Judge Bernard W. Thomas);
   - the Clark Fork River Basin (Judge Leif Erickson); and
   - the Yellowstone River Basin (Judge Roy C. Rodeghiero).

2. The current adjudication laws went into effect with the passage of Senate Bill 76 in 1979. The deadline for filing claims of existing (pre-July 1, 1973) rights was April 30, 1982. Over 203,000 claims were filed.

3. Since 1982, the Water Courts have been reviewing the claims and issuing decrees in various subbasins. There are 85 subbasins in Montana.

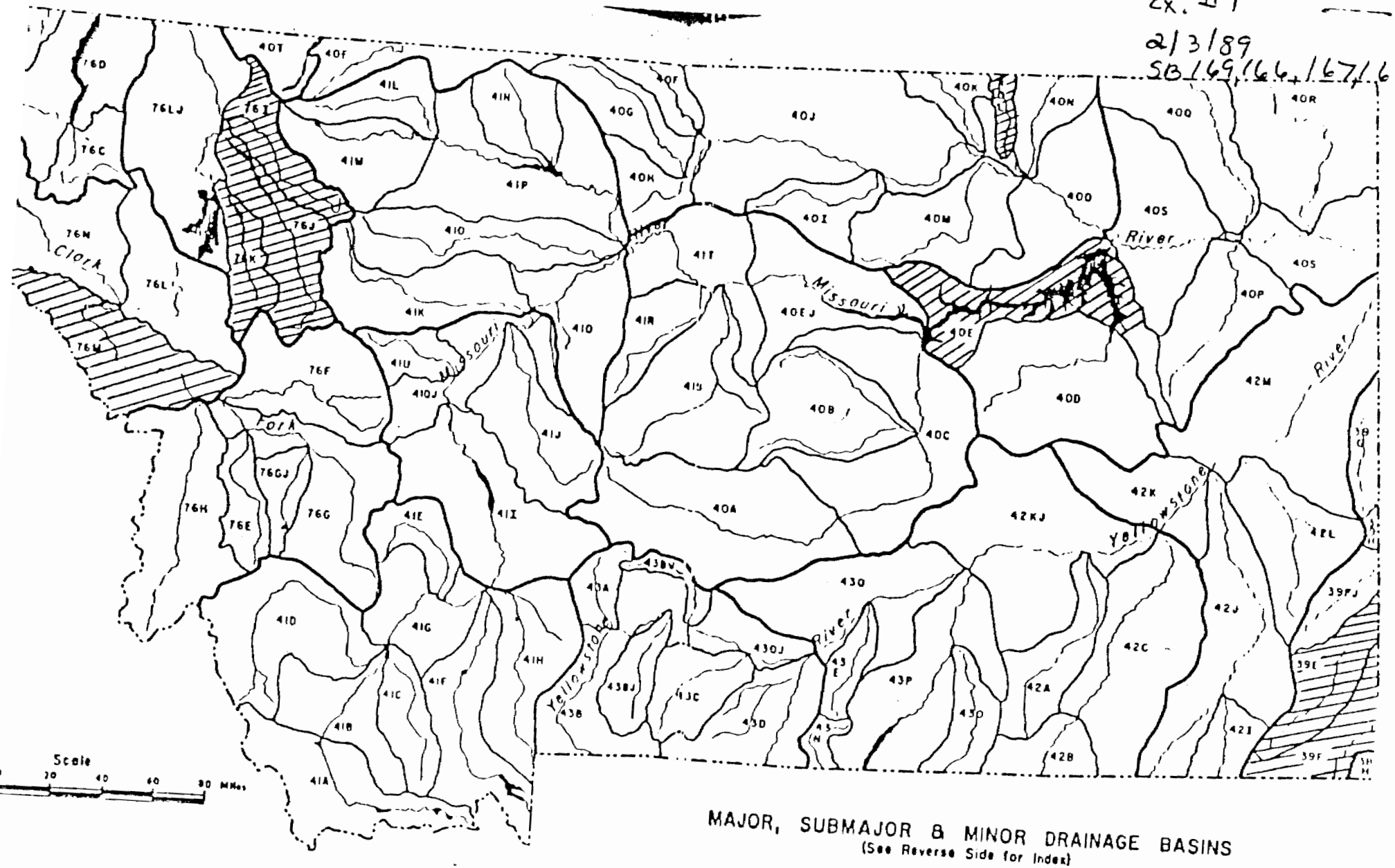
4. The Water Courts issue three types of decrees. A temporary preliminary decree is issued for non-federal and Indian claims in any basin where the federal and Indian claims remain unresolved because of negotiations with the Reserved Water Rights Compact Commission. A preliminary decree is issued when all claims (state-based and federal and Indian claims) are before the court. Senate Bill 169 ensures that both of these decrees are subject to extensive notice and opportunity for objections and hearings.

Finally, after considering all objections and the evidence before it, the Water Court issues a final decree.

5. The Department of Natural Resources and Conservation is required to assist the Water Courts. The DNRC's functions include maintaining the data base and examining claims for accuracy. Claim examination normally involves in-house review, including air photo interpretation, but can at times involve examination by field office staff at the site of the claim.

6. With funding from a special appropriation, the Water Policy Committee hired Saunders, Snyder, Ross & Dickson, P.C., of Denver, Colorado to examine the water rights adjudication process to determine if it is legally adequate, particularly if a challenge occurred under the McCarran Amendment (which allows states to adjudicate federal and Indian claims).

Ex. #1
2/3/89
SB 169, 166, 167, 168



MAJOR, SUBMAJOR & MINOR DRAINAGE BASINS
(See Reverse Side for Index)

SENATE AGRICULTURE
EXHIBIT NO. 2
DATE 2/3/89
BILL NO. SB 169 SB 166 SB 167 SB168

The Water Rights Adjudication Bills
By Request of the Water Policy Committee
Senator Esther Bengtson, sponsor

The Water Policy Committee's principal agenda item for the 1987-1989 interim was Montana's water rights adjudication process. This focus resulted from an appropriation by the 1987 Legislature to hire a consultant with no conflict of interest to review and analyze the adjudication process.

The consultant -- Saunders, Snyder, Ross & Dickson, P.C. of Denver, Colorado -- evaluated the adjudication process for over a year and delivered a comprehensive set of recommendations. Many of the recommendations stressed very positive aspects of the current adjudication, assuring the committee that the the process is not "so grievously flawed as to require a massive legislative overhaul." The consultant did, however, recommend some minor legislative fine-tuning to ensure the results sought by the legislature in 1979 are achieved.

The committee seriously considered the consultant's recommendations and proposed legislation. The result of its deliberations is contained in the committee report and a legislative package of four bills.

I. Senate Bill 169

Senate Bill 169 provides explicitly that the Water Courts may issue temporary preliminary decrees (a practice already occurring) and makes certain modifications to the notice requirements and to the objections and hearings process.

Section 1

Subsection 5 states that a temporary preliminary decree may be issued in a basin where adjudication of federal and Indian claims is precluded by the suspension under 85-2-217. The suspension is provided so that the Reserved Water Rights Compact Commission may attempt to negotiate a settlement of these rights with the various federal and Indian entities.

Subsection 6 describes the relationship between the temporary preliminary decree and preliminary decree. The temporary preliminary decree must be used in issuing the preliminary decree, but upon issuance the preliminary decree supercedes the temporary preliminary decree.

Section 2

This section describes new notice requirements for temporary preliminary decrees and preliminary decrees. Notice by mail must be sent to each person or entity with a claim, permit or

reservation in the subbasin at issue. In addition, notice of the decree's availability must be published in at least 3 newspapers geographically distributed in the general basin in which the subbasin is located.

Section 3

The hearings process is identical for temporary preliminary and preliminary decrees. As stated in subsection (1) of the bill, the DNRC and persons within the entire basin, including the subbasin, may object to claims in the decree at issue. However:

> no objection seeking to reopen and review any matter previously litigated and resolved as a result of any previous objection process is allowed." (p. 2, lines 4-6)

The exception provided for the federal government and the Indian tribes is necessary because of the ongoing negotiations with these entities by the Reserved Water Rights Compact Commission.

Subsection 2 extends the time period for filing objections and requests for hearing to 180 days after notice is given of the decrees. Two 90-day extensions, for good cause shown, are also provided. This helps to ensure that adequate time is available for interested parties to review the decree.

The amendments in the remainder of the section simply apply existing law to temporary preliminary decrees.

The effective date for this bill and Senate Bills 166, 167, and 168 is when the last bill is passed and approved (or killed).

II. Senate Bill 166

This bill enables the district courts to administer or enforce water rights according to a temporary preliminary decree, as modified after hearings and objections, or a preliminary decree. Under existing law, only final decrees may be administered.

The bill also removes water rights administration from the water courts, thereby emphasizing the courts' principal adjudication function.

Sections 1, 4 and 8

Sections 1 and 8 strike references to section 3-7-213, MCA, which provides for designation of alternate judges by the water judge from the population of district court and retired district court judges. This change still allows a water judge from another division to sit as a water judge if requested by the chief justice of the Supreme Court or the water judge pursuant to subsection (2) of this section.

2/3/89

Section 2

Section 3-7-211 is amended so that exclusive authority for administration of decrees lies with the district courts and not the water courts. The amendment emphasizes the role of the water courts in adjudicating existing water rights, not administering water rights. Water commissioners appointed by the district court have authority to distribute water according to the terms of the decree.

Section 3

This section is fundamental to this bill. Note that the district court has jurisdiction and that the court can administer not only a final decree but also temporary preliminary and preliminary decrees.

Section 5

Under existing law (85-2-227), a properly filed claim of existing right constitutes prima facie proof of its content until a final decree is issued. This amendment modifies the prima facie status of a claim for administration purposes only by stating that the claim is superceded by the issuance of a temporary preliminary decree as modified after hearings and objections or by a preliminary decree. The change ensures that rights will be administered according to the most accurate determination available.

Section 6

This section describes a process for resolving water distribution controversies. Again, the district courts supervise this process. However, if the matter involves an existing (pre-July 1, 1973) water right that has not been adjudicated in a final decree, the part of the controversy involving the determination of the pre-1973 right is referred to the water courts. The water court resolves the matter and then refers it back to the district court for inclusion with other matters concerning the controversy. The district court then administers the decree.

Section 7

Note the amendment to subsection (2), which provides for appointment of water commissioners upon application by the DNRC in areas or basins that have a temporary preliminary decree, preliminary decree or final decree. Subsection (1), which provides for water commissioners upon petition of water right holders, is not amended because it references any "decree".

Ex. #2
2/3/89

III. Senate Bill 168

With certain limitations, this bill reopens all temporary preliminary decrees, preliminary decrees, and final decrees that have been issued by the Water Courts for reexamination and objections. Section 1 of the bill would be a new section in Title 85, chapter 2, part 2 (the adjudication laws).

Subsection 1

This subsection calls for reopening of all decrees within 180 days after this bill is enacted.

Subsection 2

The notice and hearings process is identical to the process provided for temporary preliminary and preliminary decrees. The DNRC, and persons within the entire basin (including the subbasin) may object to claims in the decree at issue. However:

> no objection seeking to reopen and review any matter previously litigated and resolved as a result of any previous objection process is allowed." (p. 2, lines 4-6)

The exception provided for the federal government and the Indian tribes is necessary because of the ongoing negotiations with these entities by the Reserved Water Rights Compact Commission.

Subsections 3 and 4

Notice requirements for the reopening of a decree is identical to notice provided for new temporary preliminary and preliminary decrees (see section 2, Senate Bill 169).

Subsection 5

A 180-day time period, with possibly two 90-day extensions, is provided for objections. Again, this matches the time period for new temporary preliminary and preliminary decrees (see section 2, Senate Bill 169).

Subsections 6 and 7

Subsection 6 ensures notice to claimants of objections to their claims. Subsection 7 allows the water judge to dismiss the objection or to modify claims based on the evidence before him.

Subsections 8

Appeals are allowed from the final decree. An appeal from a temporary preliminary or preliminary decree may occur when the applicable decree becomes a final decree.

SENATE AGRICULTURE
EXHIBIT NO. 3
DATE 2/3/89
BILL NO. SB 167
SB 169

Proposed Amendments to SB 167 and SB 169
Senator Bengtson
Senate Agriculture Committee
February 3, 1989

SB 167

1. Page 3, lines 6 and 7
   Following: "within" on line 6
   Strike: the remainder of lines 6 and 7
   Insert: "the original 180 day period or any extension of it"

SB 169

1. Page 6, lines 22 and 23
   Following: "made"
   Strike: the remainder of lines 22 and 23
   Insert: "prior to the expiration of the original 180 period or any extension of it"

MONTANA STOCKGROWERS ASSOCIATION, INC.

P.O. BOX 1679 — 420 NO. CALIFORNIA ST. — PHONE (406) 442-3420 — HELENA, MONTANA 59624

SENATE AGRICULTURE
EXHIBIT NO. 7
DATE 2/7/89
BILL NO. SB167

OFFICERS.

WM. J. BROWN, JR.	SAND SPRINGS	PRESIDENT
JAMES COURTNEY	ALZADA	FIRST VICE PRESIDENT
EDWARD J. LORD	PHILIPSBURG	SECOND VICE PRESIDENT
JEROME W. JACK	HELENA	EXECUTIVE VICE PRESIDENT
KIM ENKERUD	HELENA	NATURAL RESOURCES COORDINATOR

EXECUTIVE COMMITTEE:

CLARENCE BLUNT	REGINA	WM. T. HARRIS	ORT BENTON
BILL CHRISTENSEN	HOT SPRINGS	[illegible]	MARTINSDALE
LYNN CORNWELL	GLASGOW	EARL LINDGREN	JOLIET
M.E. EDDLEMAN	WORDEN	ROLAND MOSHER	AUGUSTA
NANCY ESPY	BOYES	GREG RICE	HARRISON

February 3, 1989

Mr. Chairman and Members of the Senate Agriculture Committee

My name is Carol Mosher and today I am representing the Montana Stockgrowers Association, the Montana CattleWomen and the Montana Association of State Grazing Districts.

We are opposed to Senate Bill 167 but would like to support Mr. Stienmetz's amendments.

Thank you.

Carol Mosher

Ed Steinmetz
Montana Water Court

SENATE AGRICULTURE
EXHIBIT NO. 9
DATE 2/3/89
BILL NO. SB166, SB167
SB168, SB169

SB 166 - Admin. of Decrees by Dist. Ct.

CHANGES:

(1.) Abolishes WT Judges authority to administer Final Decrees and appoint Water Commissioners.

(2) Now Dist. Cts. responsible for administering all decrees (T.P., P. & F.) and exclusive authority to appoint water commissioners

(3) Alters prima facie status for administration

(4) Section 6 (85-2-406) Dist. Ct. relief restricted to injunctive relief. Status quo preserved only until resolved under subsection (3)

(5) Subsection (3) Dist. Ct shall settle controversy. At T.P. or decree, issues referred to WT Ct for resolution. (No finality)

COMMENTS

1. Advantages of WT Ct Judges vs. Dist. Ct. Judges (why change the present law?)

2. No need to restrict judicial relief to injunctive.

3. Neither Dist. Ct. nor WT Ct can settle or resolve controversies between appropriators until Final Decree. Current law allows judicial order to preserve status quo until Final Decree.

4. Under Sec. 7, (85-5-101) Claimants and appropriators should have procedure to petition Court directly for administration of T.P., P. or Final decrees.

Ed Steinmetz
Montana Water Co

EXHIBIT # 9
2/3/89

SB 166

Admin of Decrees by Dist Ct:

- Water use is unique - many uses are factually interrelated. Water is adjudicated by division (entire source) because of interrelatedness and need for wide-scope view.

WT Division Judges

- Currently district ct or retired judges required. Chosen because of their knowledge and interest in water related issues.
- Wide view (division wide). Can better understand effects on all users on river.
- These are the judges who have issued decrees which are to be enforced
- Only 4 judges - become specialists.
- WTKT offices in Bozeman would be closed once adjudication completed.
- WT Judges can already call in local Dist. Ct. judge.

Dist. Ct Judges

- More physically accessable to the water users.
- 20 judges required - 1 from each judicial district.
- View effects on other water users limited to boundries of judicial district. (Jurisdictional disputes)
- Until enforcement action, most Dist. Ct judges would have little exposure to adjudication process or decrees.

- Provision stating that "all Dist. Ct jurisdiction over determination and interpretation shall be exercised by WT Division judges" needs to be addressed!

EXHIBIT #
2/3/89

Ed Steinmetz
Montana Water Court

SB 167 Reopening of T.B., P. & Final Decrees

COMMENTS

(1) Currently, Bill requires all decrees to be re-opened w/in 180 d. Does this cause a problem w/regard to T.B. decrees?

(2) Entire purpose of bill is to provide Notice & reasonable opportunity to participate to all those potentially affected. Section 1, (2)(b) defeats this. Better to prohibit objections where "Notice & opportunity to participate" have already been given.

(3) Under Subsection (6), this should be amended to provide for Notice of Intent to Appear procedure.

Ed Steinmetz
Montana Water Court

EXHIBIT # 9
2/3/89

SB 167

Reopening Decrees to all sub-basins.

- Language should be added to incorporate Notice of Intent to Appear provisions.

- Section limiting objections should be reviewed carefully. Would limiting ~~objections~~ objections to "those who have had notice and opportunity to participate" be better? It does not seem fair to prohibit certain state claimants from objections even though they never had proper notice of the contested claim. As a practical matter, a claim already objected to and resolved by WC would not be objected to again unless new, strong evidence exists.

- Should the provisions of this Bill be applied w/in 180 days of effective date? - or would it be better to just make it apply at the preliminary decree stage?
  If it is applied at T.P. decree, would division-wide notice again be necessary at the decree

DATE 2/3/89 2 of 3

COMMITTEE ON Agriculture

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ed Steinmetz	Montana Water Court	166, 167 168, 169		
Marcia Rundle	MT Reserved Water Right C. Com			
Deborah B. Schmidt	EQC - Water Policy Cte	166, 167 168, 169		
Jack Stapp	Water Policy Committee	" "		

DATE 2/3/89 3 of 3

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
R. H. Ellis	Montana Rail Assn	[illegible]	[illegible]	[illegible]
Lorna Frank	Mt. Farm Bureau	169-141 168-166	X	
[illegible]	[illegible]	[illegible]	\	

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By Chairman Tom Beck, on February 10, 1989, at 1:00 p.m.

ROLL CALL

Members Present: Senators: Hubert Abrams, Gary Aklestad, Esther Bengtson, Gerry Devlin, Jack Galt, Greg Jergeson, Gene Thayer, Bob Williams, and Chairman Beck

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 160

Presentation and Opening Statement by Sponsor: Representative Steppler, House District 21. See exhibit 1.

List of Testifying Proponents and What Group They Represent:

Neil Peterson representing the Weed Control Association Madison County Weed Board

List of Testifying Opponents and What Group They Represent:

None

Testimony:
Proponents:

Neil Peterson-"We would like to go on record as supporting HB 160." See exhibit 2.

Questions From Committee Members: Senator Devlin-"Do all counties set up that they pick up cost of the conservation districts?" Rep. Steppler-"Yes, they do."

Senator Devlin-"Without an additional fee to the county

Closing by Sponsor: Representative Hayne, See exhibit 4.

DISPOSITION OF HOUSE BILL 170

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Thayer moved HB 170 BE CONCURRED IN. The motion carried unanimously. Senator Aklestad moved that HB 170 be placed on the consent calendar; the motion was seconded by Senator Devlin. The motion carried unanimously.

Senator Thayer agreed to carry HB 170 on the floor.

DISPOSITION OF SENATE BILL 168

Discussion: Doug Sternberg discussed the amendments to SB 166, SB 167, SB 168, and SB 169. See exhibits 5, 6, 7, and 8.

Amendments and Votes: Senator Bengtson moved the amendments to SB 168; the motion was seconded by Senator Galt.

Recommendation and Vote: Senator Bengtson moved SB 168 DO PASS AS AMENDED. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 2:32 p.m.

Tom Beck

TOM BECK, Chairman

TB/jj

ROLL CALL

AGRICULTURE COMMITTEE

DATE 2/10/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR HUBERT ABRAMS	✓		
SENATOR GARY AKLESTAD	✓		
SENATOR ESTHER BENGTSON	✓		
SENATOR GERRY DEVLIN	✓		
SENATOR JACK GALT	✓		
SENATOR GREG JERGESON	✓		
SENATOR GENE THAYER	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM BECK	✓		

Each day attach to minutes.

SENATE AGRICULTURE
EXHIBIT NO. 7
DATE 2/10/89
BILL NO. SB 167

Amendments Submitted by _____
Senate Agriculture Committee
February 1989

The following "grey bill" is offered by technical persons attached to the Water Policy Committee, the Water Courts, the Department of Natural Resources and Conservation, and the Reserved Water Rights Compact Commission. In general, the amendments are supported by all involved persons.

"Grey" Bill

Senate BILL NO. 167

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE WATER COURTS TO REOPEN AND REVIEW ALL ~~TEMPORARY PRELIMINARY DECREES,~~ PRELIMINARY DECREES~~,~~ AND FINAL DECREES ACCORDING TO CERTAIN PROCEDURES AND LIMITATIONS; AND PROVIDING ~~A RETROACTIVE~~ AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Reopening and review of decrees. (1) ~~Within 180 days following [the effective date of this act], the~~ The water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all ~~temporary preliminary,~~ preliminary~~,~~ or final decrees that have been issued by the water courts prior to [the effective date of this act].

POLICY DECISION: An option to the wording in subsection (1) is to apply this law to all decrees, existing and future, that "have not been noticed throughout the water division." This amendment would also require striking the last sentence in the applicability section.

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the ~~subbasin~~ BASIN for which the decree was entered; or

(ii) in other ~~subbasins~~ BASINS that are hydrologically connected to sources within the ~~subbasin~~ BASIN for which the decree was entered.

~~(b) No objection seeking to reopen and review any matter previously litigated and resolved as the result of any previous objection process is allowed, unless the objection is by an Indian tribe or federal agency that commenced negotiations pursuant to 85-2-702 or 85-2-703 at the time the matter was litigated. A tribe or federal agency that commenced negotiations at the time the matter was litigated is entitled to the benefits of the suspension provided under 85-2-217.~~ A PERSON MAY NOT RAISE AN OBJECTION TO A MATTER IN A REOPENED DECREE IF HE WAS A PARTY TO THE MATTER WHEN THE MATTER WAS PREVIOUSLY LITIGATED AND RESOLVED AS THE RESULT OF A PREVIOUS OBJECTION PROCESS.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice BY MAIL of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled

to receive service of notice under ~~85-2-232~~ 85-2-232(1).

(4) Notice of the reopening and review of a ~~temporary preliminary,~~ preliminary~~,~~ or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation which ~~in total~~ cover the water division or divisions ~~in the general stream basin~~ in which the decreed ~~subbasin~~ BASIN is located.

(5) No objection may cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within 180 days after entry of the order under subsection (1).

(6) The water judge shall ~~notify~~ PROVIDE NOTICE TO the claimant of any timely objection to his claim and, after further reasonable notice to ~~both~~ the claimant ~~and~~, the objector or objectors, AND OTHER INTERESTED PERSONS, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. Upon order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence before him, including dismissal of the objection or modification of the

portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued ~~temporary preliminary or~~ preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the ~~temporary preliminary or~~ preliminary decree has been made a final decree.

NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [section 1].

NEW SECTION. Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-209, to all ~~temporary preliminary decrees,~~ preliminary decrees~~,~~ and final decrees that have been issued by the Montana water courts prior to [the effective date of this act]. [This act] does not apply to a ~~temporary preliminary decree,~~ preliminary decree~~,~~ or final decree issued on or after [the effective date of this act].

NEW SECTION. **Section 5. Effective date.** [This act] is effective on the latest date on which any of the following occur:

(1) passage and approval of [this act], __Bill No.__ [LC 683], __Bill No.__ [LC 684], or __Bill No.__ [LC 685]; or

(2) a final determination of failure to receive passage and approval of __Bill No.__ [LC 683], __Bill No.__ [LC 684], or __Bill No.__ [LC 685].

-End-

DATE 2/10/89

COMMITTEE ON AGRICULTURE, LIVESTOCK, AND IRRIGATION

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Ed Steinmetz	Montana Water Court	SB166,167 168, 169		
Kim Enkerud	State Grazing Dist. MT Stockgrowers, MT Cattlewomen	HB 90	✓	
Neil O. Peterson	Mt Weed Control Assoc Madison Co Weed Board	HB 160	✓	
[illegible]	Diamond R Ranch	HB160	✓	
Ron de Young	Mt. Farmers Union	HB 90	✓	
Ralph Peck	Mt Dept of Agriculture	HB 170	✓	

(Please leave prepared statement with Secretary)

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By Chairman Tom Beck, on February 13, 1989, at 1:00 p.m.

ROLL CALL

Members Present: Senators: Hubert Abrams, Gary Aklestad, Esther Bengtson, Gerry Devlin, Jack Galt, Greg Jergeson, Gene Thayer, Bob Williams, Chairman Beck.

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council

Announcements/Discussion: None

DISPOSITION OF SENATE BILL 166

Discussion:

Senator Aklestad said he had a concern about adjudicated rights and is not convinced about the waste water provision in the bill. He mentioned that there were a couple irrigation projects where they do have extra water and they call it waste.

Senator Aklestad said he was not sure if there were different definitions of waste. He pointed out that the Muddy Creek coming off the Fairfield bench water would be waste. Senator Galt pointed out that waste was described as the unreasonable loss of water through the design and operation of any application of water through anything but a beneficial use.

Senator Aklestad pointed out another concern in the manner in which you can go in and readjudicate adjudicated water rights. It seems as though you could run through a preliminary decree or temporary preliminary decree. The water rights are nailed down now, have gone through the court systems, and now one more option is given to reopen that up. Chairman Beck pointed out that SB 76 opened up adjudicated rights.

Recommendation and Vote: Senator Galt moved that SB 166 DO PASS AS AMENDED. The motion passed with Senator Aklestad voting no.

DISPOSITION OF SENATE BILL 167

Discussion: A suggestion of a technical amendment to SB 167 and SB 169 made by Mr. Ross from the Denver consultants appears on the first page that accompanies the amendments to SB 167. These amendments were not included in the grey bill draft. If these provisions are to be included in the bill, the committee will need to act on them.

Amendments and Votes: Senator Galt moved the amendments. The question was called. The motion passed unanimously.

Recommendation and Vote: Chairman Beck said that SB 167 now had the technical amendments. A motion was made to move the bill as amended. Senator Jergeson said he was concerned that this bill provided for the reopening of streams that had final decree. He asked, "How many years could these be reopened?" He pointed out that these water bills could end up in conference committee in order to review them. It was pointed out that it was not sure that everyone had their day in court. If the final decree, came out and someone in another basin never had a chance to speak up but was affected by that final decree then they would have a chance to protest and have a day in court.

Senator Aklestad said that he had more opponents on the bill than proponents and wanted to know if the concerns of the Water Association, the Stockgrowers, and Ed Steinmetz had been taken care of. Chairman Beck pointed out that their concerns were the same as the Water Court, the DNRC, and the Water Compact. Mr. Steinmetz commented that the concerns were addressed.

Senator Galt moved that SB 167 DO PASS AS AMENDED. The motion carried unanimously.

DISPOSITION OF SENATE BILL 169

Doug Sternberg said that the Ross amendment, which was another technical amendment, needed to be acted on.

Amendments and Votes: Senator Galt moved to pass the technical amendments. The motion passed unanimously.

ROLL CALL

AGRICULTURE COMMITTEE

DATE 2/13

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR HUBERT ABRAMS	✓		
SENATOR GARY AKLESTAD	✓		
SENATOR ESTHER BENGTSON	✓		
SENATOR GERRY DEVLIN	✓		
SENATOR JACK GALT	✓		
SENATOR GREG JERGESON	✓		
SENATOR GENE THAYER	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM BECK	✓		

Each day attach to minutes.

SENATE AGRICULTURE
EXHIBIT NO. 2
DATE 2/13/89
BILL NO. SB167

Amendments to Senate Bill No. 167
Introduced Reading Copy

For the Committee on Senate Agriculture

Prepared by Ross/Sternberg
February 11, 1989

1. Page 3, lines 6 and 7.
Following: "within" on line 6
Strike: "180 days after entry of the order under subsection (1)"
Insert: "the original 180-day period or any extension of it"

Ex. #2
2/13/89
SB167

Amendments to Senate Bill No. 167
Introduced Reading Copy

For the Committee on Senate Agriculture
Prepared by Doug Sternberg, Committee Staff
February 10, 1989

1. Title, lines 5 and 6.
Following: "ALL" on line 5.
Strike: "TEMPORARY PRELIMINARY DECREES,"
Following: "PRELIMINARY DECREES"
Strike: ","

2. Title, lines 7 and 8.
Strike: "A RETROACTIVE"
Insert: "AN"
Following: "DATE" on line 8
Insert: "AND RETROACTIVE APPLICABILITY"

3. Page 1, line 12.
Following: "(1)"
Strike: "Within 180 days following [the effective date of this act], the"
Insert: "The"

4. Page 1, line 15.
Strike: "temporary preliminary,"

5. Page 1, line 16.
Following: "preliminary"
Strike: ","

6. Page 1, line 17.
Following: "courts"
Strike: "prior to [the effective date of this act]"
Insert: "but have not been noticed throughout the water divisions"

7. Page 1, line 24.
Strike: "subbasin"
Insert: "basin"

8. Page 2, line 1.
Strike: "subbasins"
Insert: "basins"

9. Page 2, line 2.
Strike: "subbasin"
Insert: "basin"

10. Page 2, lines 4 through 12.
Following: "(b)" on line 4.
Strike: the remainder of line 4 through "85-2-217." on line 12
Insert: "A person may not raise an objection to a matter in a reopened decree if he was a party to the matter when the

Ex. 2
2/13/89
SB 167

matter was previously litigated and resolved as the result of a previous objection process."

11. Page 2, line 15.
Following: "notice"
Insert: "by mail"

12. Page 2, line 18.
Following: "85-2-232"
Insert: "(1)"

13. Page 2, lines 19 and 20.
Following: "of a" on line 19
Strike: "temporary preliminary,"
Following: the second "preliminary" on line 20
Strike: ","

14. Page 2, lines 22 and 23
Following: "which" on line 22
Strike: "in total"

15. Page 2, line 23.
Following: "divisions"
Strike: "in the general stream basin"

16. Page 2, line 24.
Strike: "subbasin"
Insert: "basin"

17. Page 3, line 8.
Following: "shall"
Strike: "notify"
Insert: "provide notice to"

18. Page 3, line 10.
Strike: "both"
Following: "claimant"
Strike: "and"
Insert: ","
Following: "objectors,"
Insert: "and other interested persons,"

19. Page 4, line 2.
Strike: "temporary preliminary or"

20. Page 4, line 4.
Strike: "temporary preliminary or"

21. Page 4, line 18.
Strike: "temporary preliminary decrees,"

22. Page 4, line 19.
Following: "decrees"
Strike: ","

Ex. #2
2/13/89
SB 167

23. Page 4, lines 21 through 23.
Following: "act]." on line 21
Strike: the remainder of line 21 through "act]." on line 23

24. Page 5, line 3.
Following: "[LC 683],"
Insert: "or"
Following: "[LC 684]"
Strike: ", or __Bill No.__ [LC 685]"

25. Page 5, line 6.
Strike: ","
Insert: "or"

26. Page 5, line 7.
Strike: ", or __Bill No.__ [LC 685]"

DATE 4/13

COMMITTEE ON Agriculture

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Ed Steinmetz	Montana Water Court	SB166, 167, 168 + 169		
Bonnie Sutherland	City of Billings	SB265		✓
Harold D. Underwood	City of Billings	SB265		✓
Joe Steiner	City of Billings	SB265		✓
Michael Fraser	City of Livingston	SB265		✓
Steve McCullough	N.W. Potato Sales	SB357	✓	
Dan Place	Broadwater Grain	SB357	✓	
Anne Shelby	Yellowstone Co	SB265	✓	
re Vernon Westlake	H.D. #76 Gal. County	SB 357	✓	
Steve Brown	Board of Natural Resources and Conservation	SB 265	✓ support concept	
Alec Hansen	MLCT	SB 265		✓
Stan Bradshaw	Trout Unlimited	SB 265	✓	
Dan Place	Broadwater Grain Townsend MT	SB 387	✓	
[illegible]	Mont. Wtr. Resources	SB 4		✓
Ralph Peck	Montana Dept of Ag	SB387		

(Please leave prepared statement with Secretary)

SENATE STANDING COMMITTEE REPORT

February 14, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration SB 167 (first reading copy -- white), respectfully report that SB 167 be amended and as so amended do pass:

1. Title, lines 5 and 6.
Following: "ALL" on line 5.
Strike: "TEMPORARY PRELIMINARY DECREES,"
Following: "PRELIMINARY DECREES" on line 6
Strike: ","

2. Title, lines 7 and 8.
Strike: "A RETROACTIVE"
Insert: "AN"
Following: "DATE" on line 8
Insert: "AND RETROACTIVE APPLICABILITY"

3. Page 1, line 12.
Following: "(1)"
Strike: "Within 180 days following [the effective date of this act], the"
Insert: "The"

4. Page 1, line 15.
Strike: "temporary preliminary,"

5. Page 1, line 16.
Following: "preliminary"
Strike: ","

6. Page 1, line 17.
Following: "courts"
Strike: "prior to [the effective date of this act]"
Insert: "but have not been noticed throughout the water divisions"

7. Page 1, line 24.
Strike: "subbasin"
Insert: "basin"

8. Page 2, line 1.
Strike: "subbasins"
Insert: "basins"

continued

9. Page 2, line 2.
Strike: "subbasin"
Insert: "basin"

10. Page 2, lines 4 through 12.
Following: "(b)" on line 4.
Strike: the remainder of line 4 through "85-2-217." on line 12
Insert: "A person may not raise an objection to a matter in a reopened decree if he was a party to the matter when the matter was previously litigated and resolved as the result of a previous objection process."

11. Page 2, line 15.
Following: "notice"
Insert: "by mail"

12. Page 2, line 18.
Following: "85-2-232"
Insert: "(1)"

13. Page 2, lines 19 and 20.
Following: "of a" on line 19
Strike: "temporary preliminary,"
Following: the second "preliminary" on line 20
Strike: ","

14. Page 2, lines 22 and 23
Following: "which" on line 22
Strike: "in total"

15. Page 2, line 23.
Following: "divisions"
Strike: "in the general stream basin"

16. Page 2, line 24.
Strike: "subbasin"
Insert: "basin"

17. Page 3, lines 6 and 7.
Following: "within" on line 6
Strike: "180 days after entry of the order under subsection (1)"
Insert: "the original 180-day period or any extension of it"

18. Page 3, line 8.
Following: "shall"
Strike: "notify"
Insert: "provide notice to"

19. Page 3, line 10.
Strike: "both"
Following: "claimant"
Strike: "and"
Insert: ","
Following: "objectors,"
Insert: "and other interested persons,"

20. Page 4, line 2.
Strike: "temporary preliminary or"

21. Page 4, line 4.
Strike: "temporary preliminary or"

22. Page 4, line 18.
Strike: "temporary preliminary decrees,"

23. Page 4, line 19.
Following: "decrees"
Strike: ","

24. Page 4, lines 21 through 23.
Following: "act]." on line 21
Strike: the remainder of line 21 through "act]." on line 23

25. Page 5, line 3.
Following: "[LC 683],"
Strike: ","
Insert: "or"
Following: "[LC 684]"
Strike: ", or __Bill No.__ [LC 685]"

26. Page 5, line 6.
Strike: ","
Insert: "or"

27. Page 5, line 7.
Strike: ", or __Bill No.__ [LC 685]"

AND AS AMENDED DO PASS

Signed: Thomas A. Beck
Thomas A. Beck, Chairman

2-14-89
1:05 pm

scrsb167.214

Form CS-12
Rev. 1985

STATUS SHEET

51 LEGISLATIVE SESSION

JUDICIARY COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
SB 166	2-28	3-20	3-20							3-20	
SB 167	2-28	3-20	3-20							3-20	
SB 168	2-28	3-20	3-20					3-20			
SB 169	2-28	3-20	3-20							3-20	
SB 433	2-28	3-22	3-22					3-22			
SB 442	2-28	3-22	3-22					3-22			
SB 452	2-28	3-22	3-22					3-22			
SB 396	3-4	3-22	TABLED	ON 3-23							
SB 397	3-4	3-22	TABLED	ON 3-23							
SB 431	3-13	3-23	4-6							4-6	
SJR 23	4-20	4-20	4-20					4-20			

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

SENATE BILL NO. 167

INTRODUCED BY BENGTSON, GALT, STORY, STIMATZ, SPAETH, MARKS, BRADLEY, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE WATER COURTS TO REOPEN AND REVIEW ALL ~~TEMPORARY--PRELIMINARY DECREES~~, PRELIMINARY DECREES, AND FINAL DECREES ACCORDING TO CERTAIN PROCEDURES AND LIMITATIONS; AND PROVIDING A ~~RETROACTIVE~~ AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Reopening and review of decrees. (1) ~~Within 180 days following [the effective date of this act],~~ the THE water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all ~~temporary--preliminary~~, preliminary, or final decrees that have been issued by the water courts ~~prior to [the effective date of this act]~~ BUT HAVE NOT BEEN NOTICED THROUGHOUT THE WATER DIVISIONS.

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the ~~subbasin~~ BASIN for which the decree was entered; or

(ii) in other ~~subbasins~~ BASINS that are hydrologically connected to sources within the ~~subbasin~~ BASIN for which the decree was entered.

~~(b) No objection seeking to reopen and review any matter previously litigated and resolved as the result of any previous objection process is allowed, unless the objection is by an Indian tribe or federal agency that commenced negotiations pursuant to 85-2-702 or 85-2-703 at the time the matter was litigated. A tribe or federal agency that commenced negotiations at the time the matter was litigated is entitled to the benefits of the suspension provided under 85-2-217.~~ A PERSON MAY NOT RAISE AN OBJECTION TO A MATTER IN A REOPENED DECREE IF HE WAS A PARTY TO THE MATTER WHEN THE MATTER WAS PREVIOUSLY LITIGATED AND RESOLVED AS THE RESULT OF A PREVIOUS OBJECTION PROCESS.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice BY MAIL of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a temporary

~~preliminary~~, preliminary~~,~~ or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation which ~~in total~~ cover the water division or divisions ~~in-the-general stream-basin~~ in which the decreed ~~subbasin~~ BASIN is located.

(5) No objection may cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within ~~180--days--after-entry-of-the-order-under-subsection (1)~~ THE ORIGINAL 180-DAY PERIOD OR ANY EXTENSION OF IT.

(6) The water judge shall ~~notify~~ PROVIDE NOTICE TO the claimant of any timely objection to his claim and, after further reasonable notice to ~~both~~ the claimant, ~~and~~ the objector or objectors, AND OTHER INTERESTED PERSONS, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the

evidence before him, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued ~~temporary--preliminary--or~~ preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the ~~temporary--preliminary--or~~ preliminary decree has been made a final decree.

NEW SECTION. **Section 2.** Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [section 1].

NEW SECTION. **Section 3.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 4.** Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-209, to all ~~temporary-preliminary-decrees~~, preliminary

decrees, and final decrees that have been issued by the Montana water courts prior to [the effective date of this act]. ~~{This act} does not apply to a temporary preliminary decree, preliminary decree, or final decree issued on or after {the effective date of this act},~~

NEW SECTION. **Section 5.** Effective date. [This act] is effective on the latest date on which any of the following occur:

(1) passage and approval of [this act], __Bill No.__ [LC 683], OR __Bill No.__ [LC 684], ~~or Bill No. {LC 685}~~; or

(2) a final determination of failure to receive passage and approval of __Bill No.__ [LC 683], OR __Bill No.__ [LC 684], ~~or Bill No. {LC 685}~~.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on March 20, 1989, at 8:10 a.m.

ROLL CALL

Members Present: All members were present with the following exception:

Members Excused: Rep. Kelly Addy

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON SENATE BILLS 166, 167, 168, 169

Presentation and Opening Statement by Sponsor:

Sen. Esther Bengtson, Senate District 49 presented an exhibit that explained how the adjudication process began and that these bills are being introduced to clarify the adjudication process in Montana (EXHIBIT 1).

Sen. Bengtson presented exhibits for SB's 166, 167, 168, and 169 (See EXHIBITS 2, 3, 4, and 5).

Testifying Proponents and Who They Represent:

Jack Ross, Water Quality Committee
Jo Bruner, Executive Secretary, Montana Water Resources Assoc.
Ted Downey, Attorney Specializing in Water Law

Proponent Testimony:

Jack Ross stated that Montana has a very fine adjudication system. He said that he found that the statute did not have, as many of the states in the west do, a specific provision for the correction of clerical errors and decree. When they look at the need to adjudicate over 200,000 water rights in a time frame that is greatly collapsed by any other standards in the west, they have to recognize the possibility of such errors occurring and it is appropriate to provide mechanism for fixing those. The water courts had followed a practice where it was necessary for

administrative purposes to issue temporary preliminary decrees, before they were in position to enter what were provided in the statute for preliminary decrees. Another problem was that under existing law only final decrees can be administered. He proposed two amendments for SB 166 and SB 169 (EXHIBITS 6 and 7).

Jo Bruner stated that the Montana Water Resources Association supports these bills as they came out of the Senate.

Ted Downey stated he supports the amendments that have been generated by the Water Policy Committee. Many concerns that they had on the bills is SB 169 appears that the water court finds good cause to hold a hearing on every objection to a water right claim. Under the current law the statute says that the department can object to a water right claim or any person who is named in a decree can object to a claim and get a hearing without the water court finding good cause for that objection. Good cause is required to have a hearing by any other person who files objections that was not named in the decree.

Testifying Opponents and Who They Represent:

Richard Aldrich, Field Consultant, Department of Interior

Opponent Testimony:

Richard Aldrich stated that the function of SB 169 is that it gives the authority to the water courts for the issuance of preliminary decrees and it also defines how they may be used and administered. It provides for notice in the basin and provides for specific notice, prospectively by publication to water right holders outside a basin within a water shed. This provides for them an opportunity to appear an object to matters that may be determined in those decrees. Mr. Aldrich presented proposed amendments to SB 169 (EXHIBIT 8).

Questions From Committee Members: Rep. Brown asked Mr. Ross what he thought about the amendments. Mr. Ross stated that the question that Mr. Downey proposed dealt with a necessity for a good cause to be shown in order to object. He said he agreed that it is correct with respect to the original statute that the rights of the department people be named and the temporary preliminary decree to object did not require a showing of good cause. The distinction was made for other persons who may want to appear would have to show they had good cause for such an objection.

Rep. Brown asked Ed Steinmetz, Water Master for the Water Court, with the failure of his testimony for these bills does this mean he is neutral. Mr. Steinmetz stated that he didn't take a position because the Water Court is basically neutral and recognized its position as a court. They have worked in drawing up the amendments and although there are concerns,

there are still some concerns that do exist.

Rep. Brown questioned Mr. Aldrich if he was representing each of the five agencies as well with these statements or is this the general department divisions. Mr. Aldrich stated it is the departments position and the agencies as well.

Rep. Brown asked Mr. Aldrich if he had seen Mr. Ross' amendment that proposes to strike subsection C on SB 169. Mr. Aldrich stated that he has seen the amendments and said that his concern is more fundamental than simply with subsection C. It goes to the very process and the effect of the two track adjudication.

Rep. Brown commented to Mr. Aldrich that ten years ago when they set up the water adjudication process in Montana, they created a two track system at the federal governments request. Is he saying that he doesn't like the system the way it was done? Mr. Aldrich responded that what they are objecting to is the temporary decree process which they are proposing to codify, which was something invented by the court so that he court could move forward in areas where the adjudication they thought was going to be suspended. It was their impression that the adjudication would be completely suspended with respect to all parties in basins where they were negotiating entities particularly to the Indian tribes. The Water Court then invented the TPD process to allow the Water Court to issue decrees involving only the state appropriative claims in basins where there are reserved rights which are being negotiated.

Rep. Hannah asked Mr. Aldrich what would happen if they didn't pass the law. Would it improve their position with the department on the current practices of the court? Mr. Aldrich replied that they believe that if they don't pass the law it should send a message to the court that this is perhaps an authorized procedure. The court has been relying on the statute that allows them to enter other temporary decrees for the purposes of administration or for other purposes.

Rep. Brooke asked Mr. Ross if he could give an example of the procedures that he is referring to on page 4, lines 1-10. Mr. Ross stated that until a decree is issued for a claim, the claim constitutes prima facia evidence of the elements of a water right the person has claimed. In those basins where the adjudication has not reached the level of a temporary preliminary decree or preliminary decree, and under this provision would allow administration, then the District Court to consider the claim stated as prima facia evidence of the right in its determination of how administration would go forward. As soon as the Water Court has entered a temporary decree or a preliminary decree the material determined in the claim is no longer prima facia evidence for administrative purposes. Then they would move

to the decretal provision to determine how the administration will proceed.

Rep. Brown questioned Mr. Steinmetz if he would address Mr. Downey's concern on the good cause showing on page 6 in SB 169 and how does the court presently interpret that. Mr. Steinmetz stated that he wasn't aware of Mr. Downey's proposed amendment, but it is his impression that the way the court has read the statute and has interpreted it to this point, good cause is required for each of those entities for the department, anyone named in the decree, or for any other person. They construe good cause for the department to be very broad, they don't just require them to have a personal interest in the matter. The danger in taking out good cause requirement for people named in the decree is if there isn't good cause it gives them a reason to dismiss a harassing or spite objection.

Rep. Brown asked Mr. Downey if he would agree that the decision in this area is pretty much a policy decision on how it should apply. It is a question of whether the committee thinks it should apply across the board or be limited in the fashion that he would like. Mr. Downey commented that if the Water Court had been interpreting it the way they have, it appears it is working out satisfactorily, but the people aren't aware of that interpretation.

Closing by Sponsor: Sen. Bengtson stated that they must proceed. They feel that they have addressed the concerns of the federal government. The amendments, which address the federal government, were drafted by people from the Dept. of Natural Resources and from the Compact Commission that deals with the water rights. She commented that she doesn't feel they need anymore amendments.

DISPOSITION OF SENATE BILL 166

Motion: Rep. Stickney moved SB 166 BE CONCURRED IN, motion seconded by Rep. Nelson.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Eudaily moved SB 166 be amended as follows:

Page 7, line 15
Following: "DECREE"
Insert: ", or a person exercising a suspension under 85-2-217 and part of 7 of this chapter,"

Page 7, lines 16 through 18
Strike: "IF HE" on line 16 through "DECREE" on line 18

The amendments were seconded by Rep. Nelson and CARRIED unanimously.

Recommendation and Vote: Rep. Darko moved SB 166 BE CONCURRED IN AS AMENDED, motion seconded by Rep. Nelson. Motion CARRIED with Rep. Boharski voting against the motion.

DISPOSITION OF SENATE BILL 167

Motion: Rep. Wyatt moved SB 167 BE CONCURRED IN, motion seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Mercer moved the bill be amended as follows:

Page 2, lines 15 through 18
Strike: "A PERSON" on line 15 through the end of line 18

The amendment was seconded by Rep. Eudaily and CARRIED with Rep.'s Daily, Darko, Wyatt, Strizich, Brown, and McDonough voting Nay.

Recommendation and Vote: Rep. Knapp moved SB 167 BE CONCURRED IN AS AMENDED, motion seconded by Rep. Stickney. Motion CARRIED with Rep. Daily voting against the motion.

DISPOSITION OF SENATE BILL 168

Motion: Rep. Nelson moved SB 168 BE CONCURRED IN. Rep. Wyatt seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Question was called for on the motion and CARRIED unanimously.

DISPOSITION OF SENATE BILL 169

Motion: Rep. Wyatt moved SB 169 BE CONCURRED IN. Rep. Nelson seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Wyatt moved SB 169 be amended as follows:

Page 7, lines 7-16
Strike: subsection (c) in its entirety

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date March 20, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN			X
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

EXHIBIT 1
DATE 3-20-89
SB 166, 167, 1684

SOME BASICS CONCERNING THE WATER RIGHTS ADJUDICATION PROCESS

March 1989

1. The Montana Water Courts are organized into four divisions:

   - the Upper Missouri River Basin (Chief Judge W.W. Lessley);
   - the Lower Missouri River Basin (Judge Bernard W. Thomas);
   - the Clark Fork River Basin (Judge Leif Erickson); and
   - the Yellowstone River Basin (Judge Roy C. Rodeghiero).

2. The current adjudication laws went into effect with the passage of Senate Bill 76 in 1979. The deadline for filing claims of existing (pre-July 1, 1973) rights was April 30, 1982. Over 203,000 claims were filed.

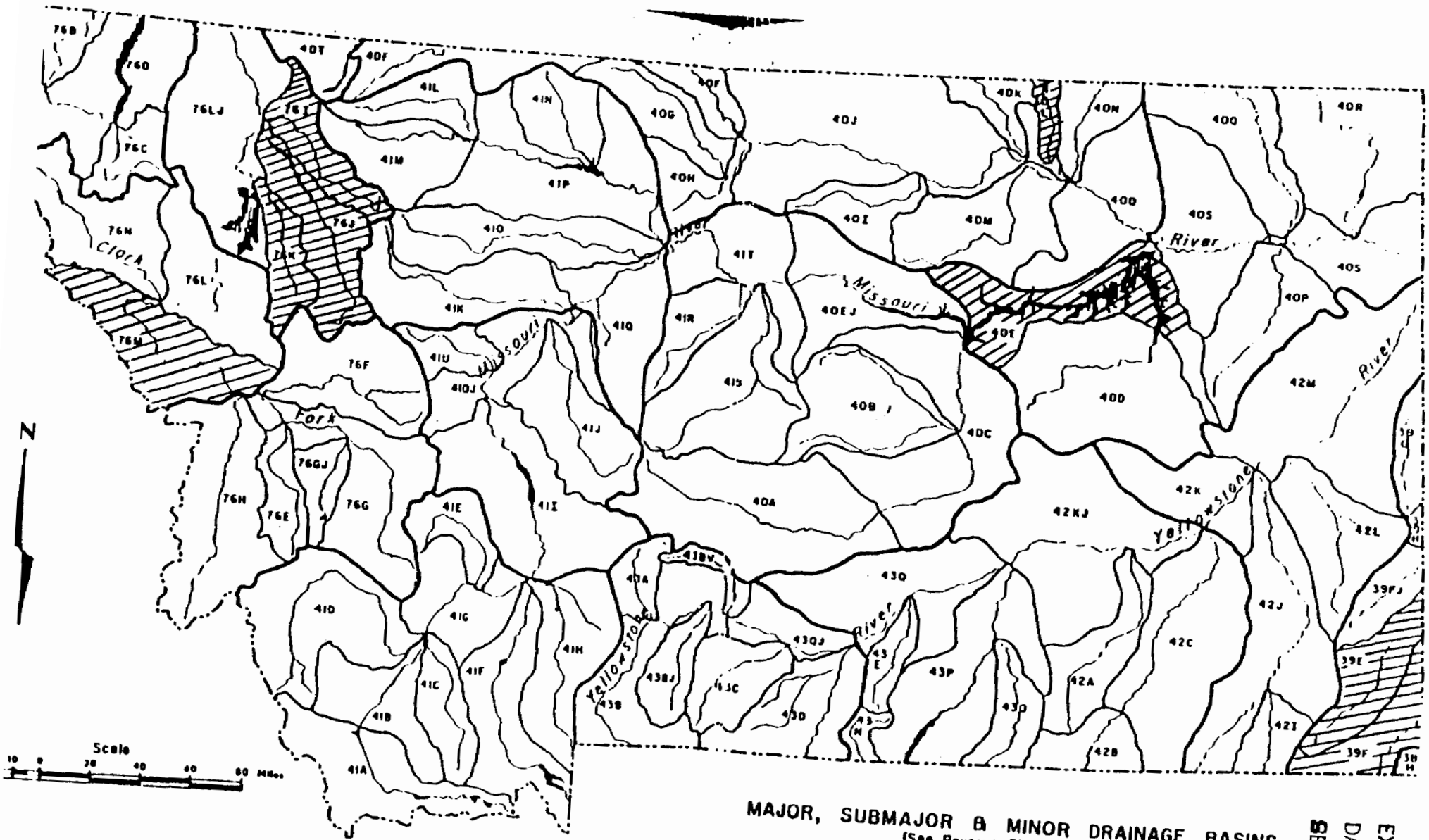
3. Since 1982, the Water Courts have been reviewing the claims and issuing decrees in various subbasins. There are 85 subbasins in Montana.

4. The Water Courts issue three types of decrees. A temporary preliminary decree is issued for non-federal and Indian claims in any basin where the federal and Indian claims remain unresolved because of negotiations with the Reserved Water Rights Compact Commission. A preliminary decree is issued when all claims (state-based and federal and Indian claims) are before the court. Senate Bill 169 ensures that both of these decrees are subject to extensive notice and opportunity for objections and hearings.

Finally, after considering all objections and the evidence before it, the Water Court issues a final decree.

5. The Department of Natural Resources and Conservation is required to assist the Water Courts. The DNRC's functions include maintaining the data base and examining claims for accuracy. Claim examination normally involves in-house review, including air photo interpretation, but can at times involve examination by field office staff at the site of the claim.

6. With funding from a special appropriation, the Water Policy Committee hired Saunders, Snyder, Ross & Dickson, P.C., of Denver, Colorado to examine the water rights adjudication process to determine if it is legally adequate, particularly if a challenge occurred under the McCarran Amendment (which allows states to adjudicate federal and Indian claims).



MAJOR, SUBMAJOR & MINOR DRAINAGE BASINS
(See Reverse Side for Index)

EXHIBIT 1
DATE 3-20-89
SB 166, 167, 168 + 169

EXHIBIT 3
DATE 3-20-89
SB 167

II. Senate Bill 167

Section 1 of the bill would be a new section in Title 85, chapter 2, part 2 (the adjudication laws).

Subsection 1

Subsection 1 states the general purpose of the bill. At some time the Water Courts must reopen every preliminary or final decree that has not been noticed throughout the water divisions. This ensures that persons throughout the general stream basin will have a chance to participate in the adjudication process and bolsters the probability that Montana's adjudication process will withstand any federal challenge.

Subsection 2

The limitation on who can object when a decree is reopened, as agreed to by the technical representatives mentioned earlier and adopted by the Senate Agriculture committee, is stated in subsection 2(b) of section 1:

> A person may not raise an objection to a matter in a reopened decree if he was a party to the matter when the matter was previously litigated and resolved as the result of a previous objection process.

Thus, a person is precluded from objecting to a matter in a reopened decree is reopened if he actively litigated the matter as an issue during previous objections and hearings.

Subsections 3 and 4

This section describes notice requirements for reopened decrees. Notice by mail must be sent to each person or entity with a claim, permit or reservation in the basin at issue. In addition, notice of the decree's availability must be published in at least 3 newspapers geographically distributed in the general stream basin in which the basin is located.

Subsection 5

A longer 180-day time period, with possibly two 90-day extensions, is provided for objections. This helps ensure ample opportunity for participation by affected persons.

Subsections 6, 7 and 8

Subsection 6 ensures notice to claimants of objections to their claims. Subsection 7 allows the water judge to dismiss the objection or to modify claims based on the evidence before him. Subsection 8 reinforces that appeals are allowed from a final decree. In addition, an appeal is available under SB 166 if the decree is being enforced.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. SENATE BILL 167 DATE MARCH 20, 1989

SPONSOR SEN. BENGTSON

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Rick Aldrich	Dept Fat		✓
Ed Steinmetz	MT Water Cont		
Joe Brayman	Mons	—	
Carol Mosher	Mt. Stockgrowers		
Marvin Barbee	F.P.A.	—	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

March 20, 1989

Mr. Speaker: We, the committee on Judiciary report that SENATE BILL 167 (third reading copy -- blue) be concurred in as amended .

(REP. SPAETH)

Signed: Dave Brown
Dave Brown, Chairman

And, that such amendments read:

1. Page 2, lines 15 through 18.
Strike: "A PERSON" on line 15 through end of line 18

HOUSE
SB 167

SENATE BILL NO. 167

INTRODUCED BY BENGTSON, GALT, STORY, STIMATZ, SPAETH, MARKS, BRADLEY, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE WATER COURTS TO REOPEN AND REVIEW ALL ~~TEMPORARY--PRELIMINARY DECREES~~, PRELIMINARY DECREES, AND FINAL DECREES ACCORDING TO CERTAIN PROCEDURES AND LIMITATIONS; AND PROVIDING A ~~RETROACTIVE~~ AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** **Reopening and review of decrees.** (1) ~~Within 180 days following {the effective date of this act},~~ the THE water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all ~~temporary--preliminary~~, preliminary, or final decrees that have been issued by the water courts ~~prior to {the effective date of this act}~~ BUT HAVE NOT BEEN NOTICED THROUGHOUT THE WATER DIVISIONS.

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the ~~subbasin~~ BASIN for which the decree was entered; or

(ii) in other ~~subbasins~~ BASINS that are hydrologically connected to sources within the ~~subbasin~~ BASIN for which the decree was entered.

~~(b) No objection seeking to reopen and review any matter previously litigated and resolved as the result of any previous objection process is allowed, unless the objection is by an Indian tribe or federal agency that commenced negotiations pursuant to 85-2-702 or 85-2-703 at the time the matter was litigated. A tribe or federal agency that commenced negotiations at the time the matter was litigated is entitled to the benefits of the suspension provided under 85-2-217. A PERSON MAY NOT RAISE AN OBJECTION TO A MATTER IN A REOPENED DECREE IF HE WAS A PARTY TO THE MATTER WHEN THE MATTER WAS PREVIOUSLY LITIGATED AND RESOLVED AS THE RESULT OF A PREVIOUS OBJECTION PROCESS.~~ A PERSON MAY NOT RAISE AN OBJECTION TO A MATTER IN A REOPENED DECREE IF HE WAS A PARTY TO THE MATTER WHEN THE MATTER WAS PREVIOUSLY LITIGATED AND RESOLVED AS THE RESULT OF THE PREVIOUS OBJECTION PROCESS, UNLESS THE OBJECTION IS ALLOWED FOR ANY OF THE FOLLOWING REASONS:

(I) MISTAKE, INADVERTENCE, SURPRISE, OR EXCUSABLE NEGLECT;

(II) NEWLY DISCOVERED EVIDENCE THAT BY DUE DILIGENCE COULD NOT HAVE BEEN DISCOVERED IN TIME TO MOVE FOR A NEW TRIAL UNDER RULE 59(B), MONTANA RULES OF CIVIL PROCEDURE;

(III) FRAUD, MISREPRESENTATION, OR OTHER MISCONDUCT OF AN ADVERSE PARTY;

(IV) THE JUDGMENT IS VOID;

(V) ANY OTHER REASON JUSTIFYING RELIEF FROM THE OPERATION OF THE JUDGMENT.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice BY MAIL of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a ~~temporary preliminary,~~ preliminary, or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation which ~~in total~~ cover the water division or divisions ~~in the general stream basin~~ in which the decreed ~~subbasin~~ BASIN is located.

(5) No objection may cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two

90-day periods if an application for extension is made within ~~180 days after entry of the order under subsection (1)~~ THE ORIGINAL 180-DAY PERIOD OR ANY EXTENSION OF IT.

(6) The water judge shall ~~notify~~ PROVIDE NOTICE TO the claimant of any timely objection to his claim and, after further reasonable notice to ~~both~~ the claimant, ~~and~~ the objector or objectors, AND OTHER INTERESTED PERSONS, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence before him, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued ~~temporary preliminary or~~ preliminary decree as a result of procedures described in this section may be appealed under

85-2-235 when the ~~temporary--preliminary--or~~ preliminary decree has been made a final decree.

NEW SECTION. **Section 2.** Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [section 1].

NEW SECTION. **Section 3.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 4.** Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-209, to all ~~temporary-preliminary-decrees~~, preliminary decrees, and final decrees that have been issued by the Montana water courts prior to [the effective date of this act]. ~~{This act} does not apply to a temporary preliminary decree, preliminary decree, or final decree issued on or after {the effective date of this act}.~~

NEW SECTION. **Section 5.** Effective date. [This act] is effective on the latest date on which any of the following occur:

(1) passage and approval of [this act], __Bill No.__ [LC 683], OR __Bill No.__ [LC 684], ~~or Bill No. {LC 685}~~; or

(2) a final determination of failure to receive passage and approval of __Bill No.__ [LC 683], OR __Bill No.__ [LC 684], ~~or Bill No. {LC 685}~~.

-End-